

ASSEMBLY BILL

No. 809

Introduced by Assembly Member Logue

February 21, 2013

An act to amend Sections 1626.2, 2290.5, 4980.01, 4982, 4989.54, 4992.3, 4996, and 4999.90 of the Business and Professions Code, relating to telehealth, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 809, as introduced, Logue. Healing arts: telehealth.

Existing law requires a health care provider, as defined, prior to the delivery of health care services via telehealth, as defined, to verbally inform the patient that telehealth may be used and obtain verbal consent from the patient for this use. Existing law also provides that failure to comply with this requirement constitutes unprofessional conduct.

This bill would delete those provisions. The bill would make additional conforming changes.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1626.2 of the Business and Professions
- 2 Code is amended to read:
- 3 1626.2. A dentist licensed under this chapter is a licentiate for
- 4 purposes of paragraph (2) of subdivision (a) of Section 805, and

1 thus is a health care practitioner subject to the provisions of Section
2 2290.5 pursuant to subdivision (b) of that section.

3 SEC. 2. Section 2290.5 of the Business and Professions Code
4 is amended to read:

5 2290.5. (a) For purposes of this division, the following
6 definitions shall apply:

7 (1) "Asynchronous store and forward" means the transmission
8 of a patient's medical information from an originating site to the
9 health care provider at a distant site without the presence of the
10 patient.

11 (2) "Distant site" means a site where a health care provider who
12 provides health care services is located while providing these
13 services via a telecommunications system.

14 (3) "Health care provider" means a person who is licensed under
15 this division.

16 (4) "Originating site" means a site where a patient is located at
17 the time health care services are provided via a telecommunications
18 system or where the asynchronous store and forward service
19 originates.

20 (5) "Synchronous interaction" means a real-time interaction
21 between a patient and a health care provider located at a distant
22 site.

23 (6) "Telehealth" means the mode of delivering health care
24 services and public health via information and communication
25 technologies to facilitate the diagnosis, consultation, treatment,
26 education, care management, and self-management of a patient's
27 health care while the patient is at the originating site and the health
28 care provider is at a distant site. Telehealth facilitates patient
29 self-management and caregiver support for patients and includes
30 synchronous interactions and asynchronous store and forward
31 transfers.

32 ~~(b) Prior to the delivery of health care via telehealth, the health~~
33 ~~care provider at the originating site shall verbally inform the patient~~
34 ~~that telehealth may be used and obtain verbal consent from the~~
35 ~~patient for this use. The verbal consent shall be documented in the~~
36 ~~patient's medical record.~~

37 ~~(c) The failure of a health care provider to comply with this~~
38 ~~section shall constitute unprofessional conduct. Section 2314 shall~~
39 ~~not apply to this section.~~

40 (d)

1 (b) This section shall not be construed to alter the scope of
2 practice of any health care provider or authorize the delivery of
3 health care services in a setting, or in a manner, not otherwise
4 authorized by law.

5 ~~(e)~~

6 (c) All laws regarding the confidentiality of health care
7 information and a patient's rights to his or her medical information
8 shall apply to telehealth interactions.

9 ~~(f)~~

10 (d) This section shall not apply to a patient under the jurisdiction
11 of the Department of Corrections and Rehabilitation or any other
12 correctional facility.

13 ~~(g)~~

14 (e) (1) Notwithstanding any other provision of law and for
15 purposes of this section, the governing body of the hospital whose
16 patients are receiving the telehealth services may grant privileges
17 to, and verify and approve credentials for, providers of telehealth
18 services based on its medical staff recommendations that rely on
19 information provided by the distant-site hospital or telehealth
20 entity, as described in Sections 482.12, 482.22, and 485.616 of
21 Title 42 of the Code of Federal Regulations.

22 (2) By enacting this subdivision, it is the intent of the Legislature
23 to authorize a hospital to grant privileges to, and verify and approve
24 credentials for, providers of telehealth services as described in
25 paragraph (1).

26 (3) For the purposes of this subdivision, "telehealth" shall
27 include "telemedicine" as the term is referenced in Sections 482.12,
28 482.22, and 485.616 of Title 42 of the Code of Federal Regulations.

29 SEC. 3. Section 4980.01 of the Business and Professions Code
30 is amended to read:

31 4980.01. (a) Nothing in this chapter shall be construed to
32 constrict, limit, or withdraw the Medical Practice Act, the Social
33 Work Licensing Law, the Nursing Practice Act, the Licensed
34 Professional Clinical Counselor Act, or the Psychology Licensing
35 Act.

36 (b) This chapter shall not apply to any priest, rabbi, or minister
37 of the gospel of any religious denomination when performing
38 counseling services as part of his or her pastoral or professional
39 duties, or to any person who is admitted to practice law in the state,

1 or who is licensed to practice medicine, when providing counseling
2 services as part of his or her professional practice.

3 (c) (1) This chapter shall not apply to an employee working in
4 any of the following settings if his or her work is performed solely
5 under the supervision of the employer:

6 (A) A governmental entity.

7 (B) A school, college, or university.

8 (C) An institution that is both nonprofit and charitable.

9 (2) This chapter shall not apply to a volunteer working in any
10 of the settings described in paragraph (1) if his or her work is
11 performed solely under the supervision of the entity, school, or
12 institution.

13 (d) A marriage and family therapist licensed under this chapter
14 is a licentiate for purposes of paragraph (2) of subdivision (a) of
15 Section 805, and thus is a health care practitioner subject to the
16 provisions of Section 2290.5 ~~pursuant to subdivision (b) of that~~
17 ~~section.~~

18 (e) Notwithstanding subdivisions (b) and (c), all persons
19 registered as interns or licensed under this chapter shall not be
20 exempt from this chapter or the jurisdiction of the board.

21 SEC. 4. Section 4982 of the Business and Professions Code is
22 amended to read:

23 4982. The board may deny a license or registration or may
24 suspend or revoke the license or registration of a licensee or
25 registrant if he or she has been guilty of unprofessional conduct.
26 Unprofessional conduct includes, but is not limited to, the
27 following:

28 (a) The conviction of a crime substantially related to the
29 qualifications, functions, or duties of a licensee or registrant under
30 this chapter. The record of conviction shall be conclusive evidence
31 only of the fact that the conviction occurred. The board may inquire
32 into the circumstances surrounding the commission of the crime
33 in order to fix the degree of discipline or to determine if the
34 conviction is substantially related to the qualifications, functions,
35 or duties of a licensee or registrant under this chapter. A plea or
36 verdict of guilty or a conviction following a plea of nolo contendere
37 made to a charge substantially related to the qualifications,
38 functions, or duties of a licensee or registrant under this chapter
39 shall be deemed to be a conviction within the meaning of this
40 section. The board may order any license or registration suspended

1 or revoked, or may decline to issue a license or registration when
2 the time for appeal has elapsed, or the judgment of conviction has
3 been affirmed on appeal, or, when an order granting probation is
4 made suspending the imposition of sentence, irrespective of a
5 subsequent order under Section 1203.4 of the Penal Code allowing
6 the person to withdraw a plea of guilty and enter a plea of not
7 guilty, or setting aside the verdict of guilty, or dismissing the
8 accusation, information, or indictment.

9 (b) Securing a license or registration by fraud, deceit, or
10 misrepresentation on any application for licensure or registration
11 submitted to the board, whether engaged in by an applicant for a
12 license or registration, or by a licensee in support of any application
13 for licensure or registration.

14 (c) Administering to himself or herself any controlled substance
15 or using of any of the dangerous drugs specified in Section 4022,
16 or of any alcoholic beverage to the extent, or in a manner, as to be
17 dangerous or injurious to the person applying for a registration or
18 license or holding a registration or license under this chapter, or
19 to any other person, or to the public, or, to the extent that the use
20 impairs the ability of the person applying for or holding a
21 registration or license to conduct with safety to the public the
22 practice authorized by the registration or license. The board shall
23 deny an application for a registration or license or revoke the
24 license or registration of any person, other than one who is licensed
25 as a physician and surgeon, who uses or offers to use drugs in the
26 course of performing marriage and family therapy services.

27 (d) Gross negligence or incompetence in the performance of
28 marriage and family therapy.

29 (e) Violating, attempting to violate, or conspiring to violate any
30 of the provisions of this chapter or any regulation adopted by the
31 board.

32 (f) Misrepresentation as to the type or status of a license or
33 registration held by the person, or otherwise misrepresenting or
34 permitting misrepresentation of his or her education, professional
35 qualifications, or professional affiliations to any person or entity.

36 (g) Impersonation of another by any licensee, registrant, or
37 applicant for a license or registration, or, in the case of a licensee,
38 allowing any other person to use his or her license or registration.

1 (h) Aiding or abetting, or employing, directly or indirectly, any
2 unlicensed or unregistered person to engage in conduct for which
3 a license or registration is required under this chapter.

4 (i) Intentionally or recklessly causing physical or emotional
5 harm to any client.

6 (j) The commission of any dishonest, corrupt, or fraudulent act
7 substantially related to the qualifications, functions, or duties of a
8 licensee or registrant.

9 (k) Engaging in sexual relations with a client, or a former client
10 within two years following termination of therapy, soliciting sexual
11 relations with a client, or committing an act of sexual abuse, or
12 sexual misconduct with a client, or committing an act punishable
13 as a sexually related crime, if that act or solicitation is substantially
14 related to the qualifications, functions, or duties of a marriage and
15 family therapist.

16 (l) Performing, or holding oneself out as being able to perform,
17 or offering to perform, or permitting any trainee or registered intern
18 under supervision to perform, any professional services beyond
19 the scope of the license authorized by this chapter.

20 (m) Failure to maintain confidentiality, except as otherwise
21 required or permitted by law, of all information that has been
22 received from a client in confidence during the course of treatment
23 and all information about the client that is obtained from tests or
24 other means.

25 (n) Prior to the commencement of treatment, failing to disclose
26 to the client or prospective client the fee to be charged for the
27 professional services, or the basis upon which that fee will be
28 computed.

29 (o) Paying, accepting, or soliciting any consideration,
30 compensation, or remuneration, whether monetary or otherwise,
31 for the referral of professional clients. All consideration,
32 compensation, or remuneration shall be in relation to professional
33 counseling services actually provided by the licensee. Nothing in
34 this subdivision shall prevent collaboration among two or more
35 licensees in a case or cases. However, no fee shall be charged for
36 that collaboration, except when disclosure of the fee has been made
37 in compliance with subdivision (n).

38 (p) Advertising in a manner that is false, fraudulent, misleading,
39 or deceptive, as defined in Section 651.

1 (q) Reproduction or description in public, or in any publication
2 subject to general public distribution, of any psychological test or
3 other assessment device, the value of which depends in whole or
4 in part on the naivete of the subject, in ways that might invalidate
5 the test or device.

6 (r) Any conduct in the supervision of any registered intern,
7 associate clinical social worker, or trainee by any licensee that
8 violates this chapter or any rules or regulations adopted by the
9 board.

10 (s) Performing or holding oneself out as being able to perform
11 professional services beyond the scope of one's competence, as
12 established by one's education, training, or experience. This
13 subdivision shall not be construed to expand the scope of the
14 license authorized by this chapter.

15 (t) Permitting a trainee or registered intern under one's
16 supervision or control to perform, or permitting the trainee or
17 registered intern to hold himself or herself out as competent to
18 perform, professional services beyond the trainee's or registered
19 intern's level of education, training, or experience.

20 (u) The violation of any statute or regulation governing the
21 gaining and supervision of experience required by this chapter.

22 (v) Failure to keep records consistent with sound clinical
23 judgment, the standards of the profession, and the nature of the
24 services being rendered.

25 (w) Failure to comply with the child abuse reporting
26 requirements of Section 11166 of the Penal Code.

27 (x) Failure to comply with the elder and dependent adult abuse
28 reporting requirements of Section 15630 of the Welfare and
29 Institutions Code.

30 (y) Willful violation of Chapter 1 (commencing with Section
31 123100) of Part 1 of Division 106 of the Health and Safety Code.

32 ~~(z) Failure to comply with Section 2290.5.~~

33 ~~(aa)–~~

34 (z) (1) Engaging in an act described in Section 261, 286, 288a,
35 or 289 of the Penal Code with a minor or an act described in
36 Section 288 or 288.5 of the Penal Code regardless of whether the
37 act occurred prior to or after the time the registration or license
38 was issued by the board. An act described in this subdivision
39 occurring prior to the effective date of this subdivision shall

1 constitute unprofessional conduct and shall subject the licensee to
2 refusal, suspension, or revocation of a license under this section.

3 (2) The Legislature hereby finds and declares that protection of
4 the public, and in particular minors, from sexual misconduct by a
5 licensee is a compelling governmental interest, and that the ability
6 to suspend or revoke a license for sexual conduct with a minor
7 occurring prior to the effective date of this section is equally
8 important to protecting the public as is the ability to refuse a license
9 for sexual conduct with a minor occurring prior to the effective
10 date of this section.

11 ~~(ab)~~

12 ~~(aa)~~ Engaging in any conduct that subverts or attempts to subvert
13 any licensing examination or the administration of an examination
14 as described in Section 123.

15 SEC. 5. Section 4989.54 of the Business and Professions Code
16 is amended to read:

17 4989.54. The board may deny a license or may suspend or
18 revoke the license of a licensee if he or she has been guilty of
19 unprofessional conduct. Unprofessional conduct includes, but is
20 not limited to, the following:

21 (a) Conviction of a crime substantially related to the
22 qualifications, functions, and duties of an educational psychologist.

23 (1) The record of conviction shall be conclusive evidence only
24 of the fact that the conviction occurred.

25 (2) The board may inquire into the circumstances surrounding
26 the commission of the crime in order to fix the degree of discipline
27 or to determine if the conviction is substantially related to the
28 qualifications, functions, or duties of a licensee under this chapter.

29 (3) A plea or verdict of guilty or a conviction following a plea
30 of nolo contendere made to a charge substantially related to the
31 qualifications, functions, or duties of a licensee under this chapter
32 shall be deemed to be a conviction within the meaning of this
33 section.

34 (4) The board may order a license suspended or revoked, or
35 may decline to issue a license when the time for appeal has elapsed,
36 or the judgment of conviction has been affirmed on appeal, or
37 when an order granting probation is made suspending the
38 imposition of sentence, irrespective of a subsequent order under
39 Section 1203.4 of the Penal Code allowing the person to withdraw
40 a plea of guilty and enter a plea of not guilty or setting aside the

1 verdict of guilty or dismissing the accusation, information, or
2 indictment.

3 (b) Securing a license by fraud, deceit, or misrepresentation on
4 an application for licensure submitted to the board, whether
5 engaged in by an applicant for a license or by a licensee in support
6 of an application for licensure.

7 (c) Administering to himself or herself a controlled substance
8 or using any of the dangerous drugs specified in Section 4022 or
9 an alcoholic beverage to the extent, or in a manner, as to be
10 dangerous or injurious to himself or herself or to any other person
11 or to the public or to the extent that the use impairs his or her ability
12 to safely perform the functions authorized by the license. The board
13 shall deny an application for a license or revoke the license of any
14 person, other than one who is licensed as a physician and surgeon,
15 who uses or offers to use drugs in the course of performing
16 educational psychology.

17 ~~(d) Failure to comply with the consent provisions in Section~~
18 ~~2290.5.~~

19 ~~(e)~~

20 (d) Advertising in a manner that is false, fraudulent, misleading,
21 or deceptive, as defined in Section 651.

22 ~~(f)~~

23 (e) Violating, attempting to violate, or conspiring to violate any
24 of the provisions of this chapter or any regulation adopted by the
25 board.

26 ~~(g)~~

27 (f) Commission of any dishonest, corrupt, or fraudulent act
28 substantially related to the qualifications, functions, or duties of a
29 licensee.

30 ~~(h)~~

31 (g) Denial of licensure, revocation, suspension, restriction, or
32 any other disciplinary action imposed by another state or territory
33 or possession of the United States or by any other governmental
34 agency, on a license, certificate, or registration to practice
35 educational psychology or any other healing art. A certified copy
36 of the disciplinary action, decision, or judgment shall be conclusive
37 evidence of that action.

38 ~~(i)~~

39 (h) Revocation, suspension, or restriction by the board of a
40 license, certificate, or registration to practice as an educational

1 psychologist, a clinical social worker, professional clinical
2 counselor, or marriage and family therapist.

3 ~~(j)~~

4 (i) Failure to keep records consistent with sound clinical
5 judgment, the standards of the profession, and the nature of the
6 services being rendered.

7 ~~(k)~~

8 (j) Gross negligence or incompetence in the practice of
9 educational psychology.

10 ~~(l)~~

11 (k) Misrepresentation as to the type or status of a license held
12 by the licensee or otherwise misrepresenting or permitting
13 misrepresentation of his or her education, professional
14 qualifications, or professional affiliations to any person or entity.

15 ~~(m)~~

16 (l) Intentionally or recklessly causing physical or emotional
17 harm to any client.

18 ~~(n)~~

19 (m) Engaging in sexual relations with a client or a former client
20 within two years following termination of professional services,
21 soliciting sexual relations with a client, or committing an act of
22 sexual abuse or sexual misconduct with a client or committing an
23 act punishable as a sexually related crime, if that act or solicitation
24 is substantially related to the qualifications, functions, or duties of
25 a licensed educational psychologist.

26 ~~(o)~~

27 (n) Prior to the commencement of treatment, failing to disclose
28 to the client or prospective client the fee to be charged for the
29 professional services or the basis upon which that fee will be
30 computed.

31 ~~(p)~~

32 (o) Paying, accepting, or soliciting any consideration,
33 compensation, or remuneration, whether monetary or otherwise,
34 for the referral of professional clients.

35 ~~(q)~~

36 (p) Failing to maintain confidentiality, except as otherwise
37 required or permitted by law, of all information that has been
38 received from a client in confidence during the course of treatment
39 and all information about the client that is obtained from tests or
40 other means.

~~(t)~~

(q) Performing, holding himself or herself out as being able to perform, or offering to perform any professional services beyond the scope of the license authorized by this chapter or beyond his or her field or fields of competence as established by his or her education, training, or experience.

~~(s)~~

(r) Reproducing or describing in public, or in any publication subject to general public distribution, any psychological test or other assessment device the value of which depends in whole or in part on the naivete of the subject in ways that might invalidate the test or device. An educational psychologist shall limit access to the test or device to persons with professional interests who can be expected to safeguard its use.

~~(t)~~

(s) Aiding or abetting an unlicensed person to engage in conduct requiring a license under this chapter.

~~(tt)~~

(t) When employed by another person or agency, encouraging, either orally or in writing, the employer's or agency's clientele to utilize his or her private practice for further counseling without the approval of the employing agency or administration.

~~(v)~~

(u) Failing to comply with the child abuse reporting requirements of Section 11166 of the Penal Code.

~~(w)~~

(v) Failing to comply with the elder and adult dependent abuse reporting requirements of Section 15630 of the Welfare and Institutions Code.

~~(x)~~

(w) Willful violation of Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

~~(y)~~

(x) (1) Engaging in an act described in Section 261, 286, 288a, or 289 of the Penal Code with a minor or an act described in Section 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time the registration or license was issued by the board. An act described in this subdivision occurring prior to the effective date of this subdivision shall

1 constitute unprofessional conduct and shall subject the licensee to
2 refusal, suspension, or revocation of a license under this section.

3 (2) The Legislature hereby finds and declares that protection of
4 the public, and in particular minors, from sexual misconduct by a
5 licensee is a compelling governmental interest, and that the ability
6 to suspend or revoke a license for sexual conduct with a minor
7 occurring prior to the effective date of this section is equally
8 important to protecting the public as is the ability to refuse a license
9 for sexual conduct with a minor occurring prior to the effective
10 date of this section.

11 ~~(z)~~

12 (y) Engaging in any conduct that subverts or attempts to subvert
13 any licensing examination or the administration of the examination
14 as described in Section 123.

15 ~~(aa)~~

16 (z) Impersonation of another by any licensee or applicant for a
17 license, or, in the case of a licensee, allowing any other person to
18 use his or her license.

19 ~~(ab)~~

20 (aa) Permitting a person under his or her supervision or control
21 to perform, or permitting that person to hold himself or herself out
22 as competent to perform, professional services beyond the level
23 of education, training, or experience of that person.

24 SEC. 6. Section 4992.3 of the Business and Professions Code
25 is amended to read:

26 4992.3. The board may deny a license or a registration, or may
27 suspend or revoke the license or registration of a licensee or
28 registrant if he or she has been guilty of unprofessional conduct.
29 Unprofessional conduct includes, but is not limited to, the
30 following:

31 (a) The conviction of a crime substantially related to the
32 qualifications, functions, or duties of a licensee or registrant under
33 this chapter. The record of conviction shall be conclusive evidence
34 only of the fact that the conviction occurred. The board may inquire
35 into the circumstances surrounding the commission of the crime
36 in order to fix the degree of discipline or to determine if the
37 conviction is substantially related to the qualifications, functions,
38 or duties of a licensee or registrant under this chapter. A plea or
39 verdict of guilty or a conviction following a plea of nolo contendere
40 made to a charge substantially related to the qualifications,

1 functions, or duties of a licensee or registrant under this chapter
2 is a conviction within the meaning of this section. The board may
3 order any license or registration suspended or revoked, or may
4 decline to issue a license or registration when the time for appeal
5 has elapsed, or the judgment of conviction has been affirmed on
6 appeal, or, when an order granting probation is made suspending
7 the imposition of sentence, irrespective of a subsequent order under
8 Section 1203.4 of the Penal Code allowing the person to withdraw
9 a plea of guilty and enter a plea of not guilty, or setting aside the
10 verdict of guilty, or dismissing the accusation, information, or
11 indictment.

12 (b) Securing a license or registration by fraud, deceit, or
13 misrepresentation on any application for licensure or registration
14 submitted to the board, whether engaged in by an applicant for a
15 license or registration, or by a licensee in support of any application
16 for licensure or registration.

17 (c) Administering to himself or herself any controlled substance
18 or using any of the dangerous drugs specified in Section 4022 or
19 any alcoholic beverage to the extent, or in a manner, as to be
20 dangerous or injurious to the person applying for a registration or
21 license or holding a registration or license under this chapter, or
22 to any other person, or to the public, or, to the extent that the use
23 impairs the ability of the person applying for or holding a
24 registration or license to conduct with safety to the public the
25 practice authorized by the registration or license. The board shall
26 deny an application for a registration or license or revoke the
27 license or registration of any person who uses or offers to use drugs
28 in the course of performing clinical social work. This provision
29 does not apply to any person also licensed as a physician and
30 surgeon under Chapter 5 (commencing with Section 2000) or the
31 Osteopathic Act who lawfully prescribes drugs to a patient under
32 his or her care.

33 (d) Incompetence in the performance of clinical social work.

34 (e) An act or omission that falls sufficiently below the standard
35 of conduct of the profession as to constitute an act of gross
36 negligence.

37 (f) Violating, attempting to violate, or conspiring to violate this
38 chapter or any regulation adopted by the board.

39 (g) Misrepresentation as to the type or status of a license or
40 registration held by the person, or otherwise misrepresenting or

1 permitting misrepresentation of his or her education, professional
2 qualifications, or professional affiliations to any person or entity.
3 For purposes of this subdivision, this misrepresentation includes,
4 but is not limited to, misrepresentation of the person's
5 qualifications as an adoption service provider pursuant to Section
6 8502 of the Family Code.

7 (h) Impersonation of another by any licensee, registrant, or
8 applicant for a license or registration, or, in the case of a licensee,
9 allowing any other person to use his or her license or registration.

10 (i) Aiding or abetting any unlicensed or unregistered person to
11 engage in conduct for which a license or registration is required
12 under this chapter.

13 (j) Intentionally or recklessly causing physical or emotional
14 harm to any client.

15 (k) The commission of any dishonest, corrupt, or fraudulent act
16 substantially related to the qualifications, functions, or duties of a
17 licensee or registrant.

18 (l) Engaging in sexual relations with a client or with a former
19 client within two years from the termination date of therapy with
20 the client, soliciting sexual relations with a client, or committing
21 an act of sexual abuse, or sexual misconduct with a client, or
22 committing an act punishable as a sexually related crime, if that
23 act or solicitation is substantially related to the qualifications,
24 functions, or duties of a clinical social worker.

25 (m) Performing, or holding one's self out as being able to
26 perform, or offering to perform or permitting, any registered
27 associate clinical social worker or intern under supervision to
28 perform any professional services beyond the scope of one's
29 competence, as established by one's education, training, or
30 experience. This subdivision shall not be construed to expand the
31 scope of the license authorized by this chapter.

32 (n) Failure to maintain confidentiality, except as otherwise
33 required or permitted by law, of all information that has been
34 received from a client in confidence during the course of treatment
35 and all information about the client that is obtained from tests or
36 other means.

37 (o) Prior to the commencement of treatment, failing to disclose
38 to the client or prospective client the fee to be charged for the
39 professional services, or the basis upon which that fee will be
40 computed.

1 (p) Paying, accepting, or soliciting any consideration,
2 compensation, or remuneration, whether monetary or otherwise,
3 for the referral of professional clients. All consideration,
4 compensation, or remuneration shall be in relation to professional
5 counseling services actually provided by the licensee. Nothing in
6 this subdivision shall prevent collaboration among two or more
7 licensees in a case or cases. However, no fee shall be charged for
8 that collaboration, except when disclosure of the fee has been made
9 in compliance with subdivision (o).

10 (q) Advertising in a manner that is false, fraudulent, misleading,
11 or deceptive, as defined in Section 651.

12 (r) Reproduction or description in public, or in any publication
13 subject to general public distribution, of any psychological test or
14 other assessment device, the value of which depends in whole or
15 in part on the naivete of the subject, in ways that might invalidate
16 the test or device. A licensee shall limit access to that test or device
17 to persons with professional interest who are expected to safeguard
18 its use.

19 (s) Any conduct in the supervision of any registered associate
20 clinical social worker, intern, or trainee by any licensee that violates
21 this chapter or any rules or regulations adopted by the board.

22 (t) Failure to keep records consistent with sound clinical
23 judgment, the standards of the profession, and the nature of the
24 services being rendered.

25 (u) Failure to comply with the child abuse reporting
26 requirements of Section 11166 of the Penal Code.

27 (v) Failure to comply with the elder and dependent adult abuse
28 reporting requirements of Section 15630 of the Welfare and
29 Institutions Code.

30 (w) Willful violation of Chapter 1 (commencing with Section
31 123100) of Part 1 of Division 106 of the Health and Safety Code.

32 ~~(x) Failure to comply with Section 2290.5.~~

33 ~~(y) —~~

34 (x) (1) Engaging in an act described in Section 261, 286, 288a,
35 or 289 of the Penal Code with a minor or an act described in
36 Section 288 or 288.5 of the Penal Code regardless of whether the
37 act occurred prior to or after the time the registration or license
38 was issued by the board. An act described in this subdivision
39 occurring prior to the effective date of this subdivision shall

1 constitute unprofessional conduct and shall subject the licensee to
2 refusal, suspension, or revocation of a license under this section.

3 (2) The Legislature hereby finds and declares that protection of
4 the public, and in particular minors, from sexual misconduct by a
5 licensee is a compelling governmental interest, and that the ability
6 to suspend or revoke a license for sexual conduct with a minor
7 occurring prior to the effective date of this section is equally
8 important to protecting the public as is the ability to refuse a license
9 for sexual conduct with a minor occurring prior to the effective
10 date of this section.

11 ~~(z)~~

12 (y) Engaging in any conduct that subverts or attempts to subvert
13 any licensing examination or the administration of the examination
14 as described in Section 123.

15 SEC. 7. Section 4996 of the Business and Professions Code is
16 amended to read:

17 4996. (a) Only individuals who have received a license under
18 this article may style themselves as “Licensed Clinical Social
19 Workers.” Every individual who styles himself or herself or who
20 holds himself or herself out to be a licensed clinical social worker,
21 or who uses any words or symbols indicating or tending to indicate
22 that he or she is a licensed clinical social worker, without holding
23 his or her license in good standing under this article, is guilty of a
24 misdemeanor.

25 (b) It is unlawful for any person to engage in the practice of
26 clinical social work unless at the time of so doing ~~such~~ *that* person
27 holds a valid, unexpired, and unrevoked license under this article.

28 (c) A clinical social worker licensed under this chapter is a
29 licentiate for purposes of paragraph (2) of subdivision (a) of Section
30 805, and thus is a health care practitioner subject to the provisions
31 of Section 2290.5 ~~pursuant to subdivision (b) of that section.~~

32 SEC. 8. Section 4999.90 of the Business and Professions Code
33 is amended to read:

34 4999.90. The board may refuse to issue any registration or
35 license, or may suspend or revoke the registration or license of
36 any intern or licensed professional clinical counselor, if the
37 applicant, licensee, or registrant has been guilty of unprofessional
38 conduct. Unprofessional conduct includes, but is not limited to,
39 the following:

1 (a) The conviction of a crime substantially related to the
2 qualifications, functions, or duties of a licensee or registrant under
3 this chapter. The record of conviction shall be conclusive evidence
4 only of the fact that the conviction occurred. The board may inquire
5 into the circumstances surrounding the commission of the crime
6 in order to fix the degree of discipline or to determine if the
7 conviction is substantially related to the qualifications, functions,
8 or duties of a licensee or registrant under this chapter. A plea or
9 verdict of guilty or a conviction following a plea of nolo contendere
10 made to a charge substantially related to the qualifications,
11 functions, or duties of a licensee or registrant under this chapter
12 shall be deemed to be a conviction within the meaning of this
13 section. The board may order any license or registration suspended
14 or revoked, or may decline to issue a license or registration when
15 the time for appeal has elapsed, or the judgment of conviction has
16 been affirmed on appeal, or, when an order granting probation is
17 made suspending the imposition of sentence, irrespective of a
18 subsequent order under Section 1203.4 of the Penal Code allowing
19 the person to withdraw a plea of guilty and enter a plea of not
20 guilty, or setting aside the verdict of guilty, or dismissing the
21 accusation, information, or indictment.

22 (b) Securing a license or registration by fraud, deceit, or
23 misrepresentation on any application for licensure or registration
24 submitted to the board, whether engaged in by an applicant for a
25 license or registration, or by a licensee in support of any application
26 for licensure or registration.

27 (c) Administering to himself or herself any controlled substance
28 or using any of the dangerous drugs specified in Section 4022, or
29 any alcoholic beverage to the extent, or in a manner, as to be
30 dangerous or injurious to the person applying for a registration or
31 license or holding a registration or license under this chapter, or
32 to any other person, or to the public, or, to the extent that the use
33 impairs the ability of the person applying for or holding a
34 registration or license to conduct with safety to the public the
35 practice authorized by the registration or license. The board shall
36 deny an application for a registration or license or revoke the
37 license or registration of any person, other than one who is licensed
38 as a physician and surgeon, who uses or offers to use drugs in the
39 course of performing licensed professional clinical counseling
40 services.

1 (d) Gross negligence or incompetence in the performance of
2 licensed professional clinical counseling services.

3 (e) Violating, attempting to violate, or conspiring to violate any
4 of the provisions of this chapter or any regulation adopted by the
5 board.

6 (f) Misrepresentation as to the type or status of a license or
7 registration held by the person, or otherwise misrepresenting or
8 permitting misrepresentation of his or her education, professional
9 qualifications, or professional affiliations to any person or entity.

10 (g) Impersonation of another by any licensee, registrant, or
11 applicant for a license or registration, or, in the case of a licensee
12 or registrant, allowing any other person to use his or her license
13 or registration.

14 (h) Aiding or abetting, or employing, directly or indirectly, any
15 unlicensed or unregistered person to engage in conduct for which
16 a license or registration is required under this chapter.

17 (i) Intentionally or recklessly causing physical or emotional
18 harm to any client.

19 (j) The commission of any dishonest, corrupt, or fraudulent act
20 substantially related to the qualifications, functions, or duties of a
21 licensee or registrant.

22 (k) Engaging in sexual relations with a client, or a former client
23 within two years following termination of therapy, soliciting sexual
24 relations with a client, or committing an act of sexual abuse, or
25 sexual misconduct with a client, or committing an act punishable
26 as a sexually related crime, if that act or solicitation is substantially
27 related to the qualifications, functions, or duties of a licensed
28 professional clinical counselor.

29 (l) Performing, or holding oneself out as being able to perform,
30 or offering to perform, or permitting any trainee, applicant, or
31 registrant under supervision to perform, any professional services
32 beyond the scope of the license authorized by this chapter.

33 (m) Failure to maintain confidentiality, except as otherwise
34 required or permitted by law, of all information that has been
35 received from a client in confidence during the course of treatment
36 and all information about the client which is obtained from tests
37 or other means.

38 (n) Prior to the commencement of treatment, failing to disclose
39 to the client or prospective client the fee to be charged for the

1 professional services, or the basis upon which that fee will be
2 computed.

3 (o) Paying, accepting, or soliciting any consideration,
4 compensation, or remuneration, whether monetary or otherwise,
5 for the referral of professional clients. All consideration,
6 compensation, or remuneration shall be in relation to professional
7 clinical counseling services actually provided by the licensee.
8 Nothing in this subdivision shall prevent collaboration among two
9 or more licensees in a case or cases. However, no fee shall be
10 charged for that collaboration, except when disclosure of the fee
11 has been made in compliance with subdivision (n).

12 (p) Advertising in a manner that is false, fraudulent, misleading,
13 or deceptive, as defined in Section 651.

14 (q) Reproduction or description in public, or in any publication
15 subject to general public distribution, of any psychological test or
16 other assessment device, the value of which depends in whole or
17 in part on the naivete of the subject, in ways that might invalidate
18 the test or device.

19 (r) Any conduct in the supervision of a registered intern,
20 associate clinical social worker, or clinical counselor trainee by
21 any licensee that violates this chapter or any rules or regulations
22 adopted by the board.

23 (s) Performing or holding oneself out as being able to perform
24 professional services beyond the scope of one's competence, as
25 established by one's education, training, or experience. This
26 subdivision shall not be construed to expand the scope of the
27 license authorized by this chapter.

28 (t) Permitting a clinical counselor trainee or intern under one's
29 supervision or control to perform, or permitting the clinical
30 counselor trainee or intern to hold himself or herself out as
31 competent to perform, professional services beyond the clinical
32 counselor trainee's or intern's level of education, training, or
33 experience.

34 (u) The violation of any statute or regulation of the standards
35 of the profession, and the nature of the services being rendered,
36 governing the gaining and supervision of experience required by
37 this chapter.

38 (v) Failure to keep records consistent with sound clinical
39 judgment, the standards of the profession, and the nature of the
40 services being rendered.

1 (w) Failure to comply with the child abuse reporting
2 requirements of Section 11166 of the Penal Code.

3 (x) Failing to comply with the elder and dependent adult abuse
4 reporting requirements of Section 15630 of the Welfare and
5 Institutions Code.

6 (y) Repeated acts of negligence.

7 (z) (1) Engaging in an act described in Section 261, 286, 288a,
8 or 289 of the Penal Code with a minor or an act described in
9 Section 288 or 288.5 of the Penal Code regardless of whether the
10 act occurred prior to or after the time the registration or license
11 was issued by the board. An act described in this subdivision
12 occurring prior to the effective date of this subdivision shall
13 constitute unprofessional conduct and shall subject the licensee to
14 refusal, suspension, or revocation of a license under this section.

15 (2) The Legislature hereby finds and declares that protection of
16 the public, and in particular minors, from sexual misconduct by a
17 licensee is a compelling governmental interest, and that the ability
18 to suspend or revoke a license for sexual conduct with a minor
19 occurring prior to the effective date of this section is equally
20 important to protecting the public as is the ability to refuse a license
21 for sexual conduct with a minor occurring prior to the effective
22 date of this section.

23 (aa) Engaging in any conduct that subverts or attempts to subvert
24 any licensing examination or the administration of an examination
25 as described in Section 123.

26 (ab) Revocation, suspension, or restriction by the board of a
27 license, certificate, or registration to practice as a professional
28 clinical counselor, clinical social worker, educational psychologist,
29 or marriage and family therapist.

30 ~~(ac) Failing to comply with the procedures set forth in Section~~
31 ~~2290.5 when delivering health care via telehealth.~~

32 ~~(ad)~~

33 (ac) Willful violation of Chapter 1 (commencing with Section
34 123100) of Part 1 of Division 106 of the Health and Safety Code.

35 SEC. 9. This act is an urgency statute necessary for the
36 immediate preservation of the public peace, health, or safety within
37 the meaning of Article IV of the Constitution and shall go into
38 immediate effect. The facts constituting the necessity are:

39 In order to protect the health and safety of the public due to a
40 lack of access to health care providers in rural and urban medically

1 underserved areas of California, the increasing strain on existing
2 providers expected to occur with the implementation of the federal
3 Patient Protection and Affordable Care Act, and the assistance that
4 further implementation of telehealth can provide to help relieve
5 these burdens, it is necessary for this act to take effect immediately.

O